

Sofia Abuda
P.O. Box 4384
Panorama City, CA
91402
415-265-8258

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FILED
2011 SEP 22 AM 11:40
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY S

XPAYS, INC

CASE No. CV 11-05880 ODW

Plaintiff,

vs.

MOTION TO QUASH OR DISMISS
SUBPOENA

Jan C. Booker (representative of
DOE 148), *pro se*, without
council

Defendants.

_____/

MOTIONS TO DISMISS OR MOTION TO QUASH SUBPOENA

Filed Under Penalty of Perjury

THE UNDERSIGNED, *pro se*, moves the court, pursuant to Fed. R. Civ.P. 45(c)(3), and limits his appearance for the purposes of contesting joinder, for an order quashing the subpoena served on Verizon, the Internet Service Provider (ISP) of the undersigned, (see Attachment A), seeking information relating to subscriber information of a certain IP address, and states that;

1. The undersigned was not the direct recipient of the subpoena at issue in this case, but is instead an eand user of the above named Internet Service Provider (ISP), but has standing to file this motion to quash pursuant to the personal right and privilege of protection of information, and identity.
2. The purpose of the subpoena issued to the undersigned is to disclose my identity as a listed "Doe" in the above styled case, a placeholder name used when a defendant's true

identity is unknown. See generally, Plant v. Does, 19 F. supp. 2d 1316, 1320 (S.D. Fla 1998).

I, Doe 148, the Affiant, am making and filing this affidavit solely in support of improper joinder and innocence in the above styled matter. However, in the event that jurisdiction is joinder and lack of innocence is found proper and if no supplementary answer is filed by the Defendant within 30 days of service, the intent of this affidavit shall be changed to be considered to be a verified response to the Plaintiff's complaint, negatively averring all claims, and setting forth these and additional affirmative defenses. Under penalty of perjury I hereby certify that the following statements are accurate and true to the best of my knowledge.

FRCP 20(a) allows a plaintiff to join multiple defendants in one action if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

Many courts, including several from this District, have already addressed how the joinder rules apply to lawsuits against Doe defendants who are alleged to have acted in concert by using BitTorrent or other similar peer-to-peer (P2P) software to infringe copyright laws. Most recent decisions on this issue have concluded that the use of the BitTorrent protocol does not distinguish these cases from earlier rulings in P2P cases in which courts found that joining multiple Doe

defendants was improper since downloading the same file did not mean that each of the defendants were engaged in the same transaction or occurrence. See, e.g., IO Group, Inc. v. Does 1-435, Case No. 10-4382-SI (N.D. Cal. Feb. 3, 2011); Diabolic Bideo Productions, Inc. v. Does 1-2099, Case No. 10-5865-PSG (N.D. Cal. May 31, 2011); Pacific Century Int'l, Ltd. V. Does 10101, Case No. 11-2533-DMR (N.D. Cal. July 8, 2011); Boy Racer v. Does 2-52, Case No. 11-2834-LHK (PSG) (N.D. Cal. Aug. 5, 2011); Hard Drive Productions, Inc. v. Does 1-188, Case No. 11-1566-JCS (N.D. Cal. Aug. 23, 2011). Upon reading the views expressed by these courts, it appears the plaintiff has not established that joinder would be proper under FRCP 20(a) (2) merely because defendants used BitTorrent to download the same film.

Further, Affiant pleads innocence in this matter before the court on the following reason(s):

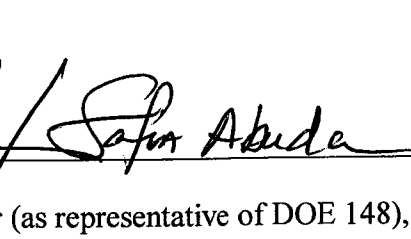
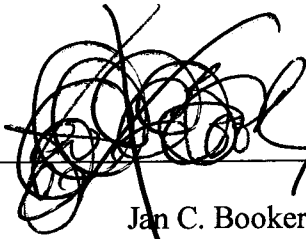
Affiant has multiple wired and wireless desktop computers, laptops, netbooks, ipads, smart phones, ps3's, and wii's at their residence used by multiple users (family members, friends, coworkers, visitors, etc.), that all share the same IP address (Internet connection). Affiant, under penalty of perjury, certifies to this court, that they have no knowledge of the alleged infringement and no previous knowledge of BitTorrent terms, terminology, and technology prior to receiving aforementioned subpoena.

Further, Affiant asks the court to use its own discretion when viewing evidentiary weight given the validity of copyright and facts stated in the certificate as allowed for in **Copyright Law of the United States of America, section 410(c)**: “In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute *prima facie* evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court.” This video was published in 2004 according to *The Internet Movie Database (IMDB)*, See <http://www.imdb.com/title/tt0412260/>, and clearly falls outside the five year statute, Plaintiff in these proceedings has forfeited the rights of *prima facie* evidence.

I, DOE 148, the undersigned Defendant (or representative) prays this honorable court quash the subpoena requesting subscriber information relating to my IP address issued against the Internet Service Provider in the instant case with prejudice, and suspend discovery pursuant to the local rules.

BY SIGNING BELOW, I hereby declare, certify, verify, and state, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Signed: _____



Jan C. Booker (as representative of DOE 148), *pro se* Sofia Abuda
P.O. Box 4384
Panorama City, CA 91402
jcbooker@hotmail.com

Dated: _____

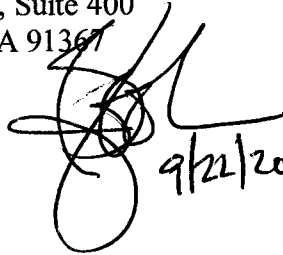
9/22/2011

CERTIFICATE OF SERVICE

I hereby certify that on 09/22/2011, I served a copy of the foregoing document, via

US Mail (Certified), on:

Michael W. Fattorosi, Esq.
LAW OFFICES OF MICHAEL W. FATTOROSI
5850 Canoga Ave., Suite 400
Woodland Hills, CA 91367



9/22/2011

Attachment A

8/31/2011

READ AT ONCE

**COURT-DIRECTED NOTICE
REGARDING ISSUANCE OF SUBPOENA
SEEKING DISCLOSURE OF YOUR IDENTITY**

Verizon Online, as your Internet Service Provider, recently received a legal document called a subpoena. Absent action by you, the subpoena requires us to disclose your name, address and other information. The subpoena was issued pursuant to a Court Order in a lawsuit pending in the United States District Court for the Central District of California.

The Plaintiffs have filed a lawsuit alleging that various people have perhaps infringed their copyrights by illegally downloading and/or distributing a movie. However, the Plaintiffs do not know the actual names or addresses of these people – only the Internet Protocol address (“IP address”) of the computer associated with the allegedly illegal activity.

Accordingly, Plaintiffs have filed lawsuits against so-called anonymous “John Doe” defendants and issued subpoenas to determine the identity of these people (the so-called “John Does.” The Plaintiffs have asked us to disclose your identification information to them, including your name, current (and permanent) addresses, and your email address and Media Access Control number. Enclosed is a copy of the subpoena seeking information and please find the IP address at the end of this letter that has been associated with your computer and showing the date and time you are alleged to have used the Internet to download or upload the (The plaintiffs will have to prove that you illegally used the internet to download or upload the particular movie. We do not have records that would prove or disprove that fact; we simply have records that show that an IP address was assigned to a specific customer at a specific time. It may be that someone else, for a variety of reasons, was using the IP address).

This is a civil lawsuit, not a criminal case. You have not been charged with any crime. If the Plaintiffs receive your information from your Internet Service Provider, you will likely be added as a named defendant to their lawsuit.

**INFORMATION ABOUT YOU HAS NOT YET BEEN DISCLOSED.
BUT IT WILL BE DISCLOSED IN 30 DAYS IF YOU DO NOT
CHALLENGE THE SUBPOENA.**

Your identifying information has not yet been disclosed to the Plaintiffs.

This notice is intended to inform you of some of your rights and options. It does not provide legal advice. We cannot advise you about what grounds exist, if any, to challenge this subpoena. If you would like legal advice you should consult an attorney. Within this notice you will find a list of resources that may help you locate an attorney and decide how to respond to the subpoena or lawsuit

If you want to prevent being identified, you have 30 days from the date of this notice to file a motion to quash or vacate the subpoena and notify Verizon Online that you have done so. If you need more than 30 days to file such a motion or find a lawyer to assist you, you can file a motion asking for an extension of time; you should notify Verizon Online if you file a motion asking for more time.

The appropriate address to send such notices to Verizon is:

Verizon Legal Compliance
Custodian of Records
P.O. Box 1001
San Angelo, TX 76902

Fax Number: 325-949-6916

Please provide us with a copy of the filed motion to quash the subpoena, your identity will not be disclosed until the court makes a decision on your motion. If you do nothing, then after 30 days we are compelled to send the Plaintiff your name, address, email address, telephone number, and your modem's Media Access Control number.

You may wish to obtain an attorney to advise you on these issues or to help you take action.

To help you find a lawyer, the American Bar Association's attorney locator can be found on the Internet at <http://www.abanet.org/lawyerlocator/searchlawyer.html>

The Electronic Frontier Foundation is an organization that seeks to protect the rights of Internet users. They have created a website that lists attorneys who information about the lawsuit that has been filed against you as well as similar lawsuits:

<https://www.eff.org/issues/file-sharing/subpoena-defense>

If you are interested in discussing this matter with the Plaintiff's attorneys, you may contact them by telephone at (818) 881-8500, by fax at (818) 881-9008.

But please understand that these lawyers represent the company that is trying to sue you. They can speak with you about settling the lawsuit, if you wish to consider that. At the same time, you must be aware that if you contact them they may learn your identity, and that anything you say to them can later be used against you in court.

You should not call the Court.

Again, you may wish to retain an attorney to discuss these issues and your options.

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Texas

XPAYS, INC., a Delaware Corporation,

Plaintiff

v.

DOES 1 through 995,

Defendant

Civil Action No. CV 11-5880 ODW (FFMx)

(If the action is pending in another district, state where:
Central District of California)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Verizon Online LLC, Verizon Legal Compliance, TXD01613
P.O. Box 1001, San Angelo, TX 76902

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Information, including name, address, telephone numbers, e-mail address and Media Control Addresses, sufficient to identify and contact all persons whose IP addresses are included in the attached list. Note that I am happy to provide this list in whatever format is most convenient for you.

Place: Law Offices of Michael W. Fattorosi
5850 Canoga Ave. Ste. 400, Woodland Hills, CA 91367

Date and Time:

09/08/2011 10:00 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 08/01/2011

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) Plaintiff,
XPAYS, INC., a Delaware Corporation, who issues or requests this subpoena, are:

Michael W. Fattorosi, Esq., Law Offices of Michael W. Fattorosi
5850 Canoga Ave. Ste. 400, Woodland Hills, CA 91367

818-881-8500 phone, 818-881-9008 fax
michael@fattlegal.com